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LAFACE RECORDS LLC; UMG
RECORDINGS, INC.; and SONY BMG
MUSIC ENTERTAINMENT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

LAFACE RECORDS LLC, a Delaware limited
liability company; UMG RECORDINGS, INC.,
a Delaware corporation; and SONY BMG
MUSIC ENTERTAINMENT, a Delaware
general partnership,

Plaintiffs,

v.

JOHN DOE #5,

Defendant.

CASE NO. 3:07-CV-04839-EMC

Honorable Edward M. Chen

***EX PARTE APPLICATION TO CONTINUE
CASE MANAGEMENT CONFERENCE
AND EXTEND TIME TO SERVE
DEFENDANT AND [PROPOSED] ORDER***

1 Plaintiffs respectfully request that the Court continue the case management conference
2 currently set for January 23, 2008, at 1:30 p.m. to April 23, 2008. Plaintiffs further request, pursuant
3 to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1)(A), that the Court grant an
4 additional 90 days to serve Defendant with the Summons and Complaint. As further explained
5 below, the parties have reached a provisional settlement in this case, and Plaintiffs have not yet
6 received a response to the early discovery authorized by this Court to determine the true identity of
7 the Doe defendant. In support of their request, Plaintiffs state as follows:
8

9 1. The initial case management conference is set for January 23, 2008, at 1:30 p.m. The
10 Court, acting of its own accord, previously rescheduled the case management conference from the
11 originally scheduled date of December 26, 2007. The current deadline for service of process is
12 January 18, 2008.
13

14 2. Plaintiffs filed their Complaint for Copyright Infringement against Defendant John
15 Doe #5 ("Defendant") on September 20, 2007. Plaintiffs did not have sufficient identifying
16 information to name Defendant in the Complaint, but were able to identify Defendant by the Internet
17 Protocol address assigned to Defendant by Defendant's Internet Service Provider ("ISP") – here,
18 Santa Clara University.

19 3. In order to determine Defendant's true name and identity, Plaintiffs filed their *Ex*
20 *Parte* Application for Leave to Take Immediate Discovery on September 20, 2007, requesting that
21 the Court enter an Order allowing Plaintiffs to serve a Rule 45 subpoena on the ISP.

22 4. The Court entered an Order for Leave to take Immediate Discovery on November 20,
23 2007, which was promptly served upon the ISP along with a Rule 45 subpoena. Plaintiffs thereafter
24 granted the ISP an extension of time to respond to Plaintiffs' subpoena. To date the ISP has not
25 supplied the subpoenaed information, but Plaintiffs expect a response from the ISP on February 8,
26 2008.
27
28

1 5. However, after being notified by the ISP of Plaintiffs' subpoena, Defendant contacted
2 Plaintiffs, and the parties have reached a provisional settlement. The parties are now in the process
3 of finalizing the settlement.

4 6. Given the circumstances of this case, a case management conference is unnecessary
5 at this time, and Plaintiffs respectfully request that the case management conference be continued to
6 April 23, 2008. Plaintiffs also request an additional 90 days to effectuate service so that, in the event
7 the settlement fails, Plaintiffs will have time to receive discovery from the ISP, file an amended
8 complaint naming Defendant individually, and serve Defendant with the summons and complaint.

9 7. Plaintiffs submit that filing their *Ex Parte* Application for Leave to Take Immediate
10 Discovery demonstrates "good cause" under Rule 4 for an extension of time for service. *See Ritts v.*
11 *Dealers Alliance Credit Corp.*, 989 F. Supp. 1475, 1479 (N.D. Ga. 1997) (stating good cause
12 standard for service extensions). Unlike a traditional case in which the defendant is known by name
13 and efforts to serve can begin immediately after filing the complaint, in this case Plaintiffs first had
14 to seek the identity of Defendant through the subpoena to the ISP, a process that is not yet complete.
15 This Court has discretion to enlarge the time to serve even where there is no good cause shown.
16 *Henderson v. United States*, 517 U.S. 654, 658 n. 5 (1996).

17 8. Because the copyright infringements here occurred in 2007, the three-year limitations
18 period for these claims has not expired. *See* 17 U.S.C. § 507(b) (2000). There can thus be no
19 prejudice to the Defendant from any delay in serving the Complaint.
20

21 9. Plaintiffs will provide the Defendant with a copy of this request and any Order
22 concerning this request when service of process occurs.

23 Dated: January 14, 2008

HOLME ROBERTS & OWEN LLP

24
25 By: /s/ Matthew Franklin Jaksa
26 MATTHEW FRANKLIN JAKSA
27 Attorney for Plaintiffs
28 LAFACE RECORDS LLC; UMG
RECORDINGS, INC.; and SONY BMG
MUSIC ENTERTAINMENT

[PROPOSED] ORDER

Good cause having been shown:

IT IS ORDERED that the case management conference currently set for January 23, 2008, at 1:30 p.m. be continued to April 23, 2008.

IT IS FURTHER ORDERED that, pursuant to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1), Plaintiffs' time to serve the Summons and Complaint on Defendant be extended to ~~April 17, 2008.~~ May 21, 2008 at 1:30 p.m. A Joint CMC statement shall be filed by May 14, 2008.

Dated: January 15, 2008

